IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1638 OF 2003
IN
SUIT NO.3275 OF 1987

P.K.Thilakan ...Plaintiff
Vs.
Vithala N. Shetty ...Defendant

Mrs.Asha Nari i/b. Mahesh Menon & Co. for Plaintiff
Mr. M.C. Hegde i/b. B. Mohiddin for Defendant

CORAM: SMT.R.S.DALVI,J.
DATED: 5TH AUGUST, 2005

P.C.

1. The Plaintiff entered into a conducting agreement with the Defendant on 16th August 1984, Exhibit-B to the plaint. The Defendant has been conducting the suit restaurant since the date of the agreement.

2. The Plaintiff also executed an affidavit on 21st September 1984 Exhibit-C to the plaint. Under that affidavit, the Plaintiff interalia confirmed the execution of conducting agreement and committed himself to assign his lawful interest in the hotel in the name of the Defendant within 3 years ending 15th August 1987 on receipt of Rs.6.5 lakhs inclusive of the security deposit of Rs.1.5 lakhs already with the Plaintiff.

3. It is seen from the affidavit of the Plaintiff, Exhibit-C to the plaint, that the parties determined the valuation of the suit premises and business at Rs.6.5 lakhs in 1987. The Defendant was to be assigned the said business from 1987.

4. Despite the reliance of the Plaintiff upon his own affidavit, the Plaintiff has not assigned the business to the Defendant. The Defendant claims that he should be assigned the said business and that there should be a outright sale to him.

5. The Plaintiff would be entitled to consideration at the market value as on the date of the actual assignment/sale. Since that has not taken place until today, the parties must determine the market value of the suit premises as on today.

6. The market valueis is shown in the ready reckoner issued by the Stamp office of the State of Maharashtra. The Defendant has obtained that valuation and claims depreciation because the suit property is in an old tenanted building. The depreciation is also allowed in the ready reckoner at a specified percentage. The Plaintiff disputes that valuation.

7. The other mode of ascertaining the valuation of the suit premises is to obtain the actual sale

value of the properties in close proximity to the suit property. The Plaintiff may obtain documents of actual transactions in the locality close to the suit premises. Both parties must abide such valuation and execute the assignment at such rate.

8. This suit has been pending since the last 18 years. It deserves to be disposed of upon considering such valuation and upon execution of the admitted assignment. A Notice of Motion is for enhancement of royalty from Rs.20,000/- to Rs.40,000/- per month and for appointing any third party as the agent of the suit business would prove to be counter-productive for the Plaintiff himself.

9. The royalty cannot be enhanced, since the ultimate assignment is to be infavour of the Defendant. In view of the Plaintiff's statement in Exhibit-C to the Plaint, it would be improper to appoint third party as an agent pending the suit.

10. The Plaintiff shall be entitled to show the market rate of the suit premises so soon as he obtains valuation of the suit property by similar transactions in his locality. The offer of the Defendants to purchase/get assigned the suit property at market value is accepted.

11. There shall be no other order on this Notice

of Motion. No order as to costs.

(SMT.R.S.DALVI,J.)